MONTANA LEGISLATIVE HISTORY

Chapter 248 1991

Bill H 429 S _____ Original bill & history ✓C

H. Committee on Human Services & Aging			S. Committee on Judiciary		
Hearing Date(s)	Feb 06	✓C	Hearing Date(s)	Mar 11	✓C
		C			C
		C			C
		C			C
Date Out	Feb 07	✓C		Mar 11	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2/13	COMMITTEE REPORT—BILL CONCURRED		
2/13	PLACED ON CONSENT CALENDAR		
2/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
2/20	SIGNED BY SPEAKER		
2/20	SIGNED BY PRESIDENT		
2/20	TRANSMITTED TO GOVERNOR		
2/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 45	EFFECTIVE DATE: 10/01/91	

HB 428 INTRODUCED BY GOULD, ET AL.
STATE PRISON SENTENCE TO BE SERVED IN PLACE OR PROGRAM DEPARTMENT OF INSTITUTION CHOOSES
BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/29	INTRODUCED		
1/29	REFERRED TO JUDICIARY		
1/29	FIRST READING		
2/11	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED		
2/16	2ND READING PASSED AS AMENDED	97	2
2/19	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/11	HEARING		
3/16	COMMITTEE REPORT—BILL NOT PASSED		
3/16	ADVERSE COMMITTEE REPORT ADOPTED	48	1

HB 429 INTRODUCED BY KASTEN, ET AL.
MEDICAL PAROLE FOR INCAPACITATED PRISONERS
BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/29	INTRODUCED		
1/29	REFERRED TO HUMAN SERVICES & AGING		
1/29	FIRST READING		
2/06	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED		
2/09	2ND READING PASSED	90	3
2/12	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
3/11	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	47	1
3/15	3RD READING CONCURRED	43	5
	RETURNED TO HOUSE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	95	2
3/20	3RD READING AMENDMENTS CONCURRED	95	3
3/23	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 248	EFFECTIVE DATE: 10/01/91	

HB 430 INTRODUCED BY DRISCOLL
REPEAL STATE EMPLOYEE CLASSIFICATION AND PAY PLAN

1/29	INTRODUCED		
1/29	REFERRED TO STATE ADMINISTRATION		
1/29	FIRST READING		

HOUSE BILL NO. 429

INTRODUCED BY KASTEN, FAGG, THOFT, BROOKE, J. RICE, STRIZICH, BARDANOUVE, TOOLE, MERCER, BRADLEY, T. BECK, BENGTSON, MESSMORE, BECKER, CROMLEY, DARKO, D. BROWN
BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

IN THE HOUSE

JANUARY 29, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
FEBRUARY 7, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 8, 1991	PRINTING REPORT.
FEBRUARY 9, 1991	SECOND READING, DO PASS.
FEBRUARY 11, 1991	ENGROSSING REPORT.
FEBRUARY 12, 1991	THIRD READING, PASSED. AYES, 96; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 13, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 12, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 14, 1991	SECOND READING, CONCURRED IN.
MARCH 15, 1991	THIRD READING, CONCURRED IN. AYES, 43; NOES, 5.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 19, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS

CONCURRED IN.

MARCH 20, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 429

INTRODUCED BY [signatures]

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL PAROLE OF INCARCERATED PERSONS; AND AMENDING SECTION 46-23-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Medical parole.** (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death or serving a sentence imposed under 46-18-202(2). To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome that renders the person incapable of presenting a danger to society;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person poses a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect

LC 1306/01

INTRODUCED BILL
HB 429

the person's eligibility for nonmedical parole.

(6) Sections 46-23-203 through 46-23-207 and 46-23-215 through 46-23-218 apply to nonmedical parole.

Section 2. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for** nonmedical **parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A convict serving a time sentence may not be paroled under this section until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 1/2 years.

(3) A convict serving a life sentence may not be paroled under this section until he has served 30 years, less the good time allowance provided for in 53-30-105.

(4) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(5) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) and (3).

(6) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (5) do not apply."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 2, and the provisions of Title 46 apply to [section 1].

-End-

a team of practitioners. At the point when that person is being graded, he functions as the primary care provider, he is then identified and essentially can sign the birth certificate.

REP. MESSMORE asked if naturopaths can immunize children. **Dr. Aagenas** stated that she does not immunize children, she refers them to a medical doctor.

REP. TUNBY asked if she actively promotes immunization. **Dr. Aagenas** stated that they operate under the policy to inform the parent so the parent can make the decision. She actively provides information on immunization.

REP. TUNBY asked if she refers patients to medical doctors. **Dr. Aagenas** stated that she couldn't practice without referring patients to medical doctors.

REP. CROMLEY stated that there are two colleges offering degrees in Naturopathic Medicine, do other colleges in the country offer courses in Naturopathic Medicine. **Dr. Bergkamp** said there are only two colleges that have accreditation status by the Department of Education.

REP. LEE asked what is included on the bottom of page 3, line 24, where operative methods for the surgical repair. **Dr. Bergkamp** stated that operative and electrical are considered the very instruments that we are talking about. A suturing needle would come under that qualification, one treatment that some Naturopaths do to control bleeding. They are very superficial.

REP. JOHNSON asked if there were an allied health care board, would this group be willing to be licensed under that proposal. **Dr. Aagenas** stated they are willing to write coordination and instruction into this bill.

REP. BOHARSKI asked what a legend drug is and if oxytocin was one. **Dr. Dunn** stated that a legend drug is one protected by law and yes, oxytocin is.

REP. LEE asked what amount of class time was devoted to spinal manipulation. **Dr. Bergkamp** stated he had a minimum of 200 hours which did not include the clinical application. **Dr. Dave Gray** stated that 2,018 clinical hours are required. Between 600 to 800 hours of the 2000 is on chiropractic manipulative techniques. This varies from school to school.

Closing by Sponsor:

SEN. HALLIGAN stated that the Naturopaths need to be licensed, otherwise the public will not be protected. If he didn't feel there was a scientific foundation or that the education wasn't there he wouldn't be here.

Presentation and Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, House District 28, Brockway, stated that this bill grants a medical parole for individuals who have an incapacitating illness or disease and who do not present a danger to society. They must have this certified by a doctor, while the examination or misdiagnosis and also a prognosis of what their recovery might be. This does not, in any way, diminish the Board of Pardons or remove any of the safeguards that the Board provides to society.

Proponents' Testimony:

Dan Russell, Administrator, Corrections Division, Department of Institutions, stated that this bill was requested by the Department of Institutions (DOI). Currently neither the Board of Pardons or DOI is capable of placing medically incapacitated or terminally ill inmates on parole who are no danger to society. They remain a financial burden on the state. These cases are rare but do occur. There is no option but to pay their bills with General Fund money. Medical paroles will enhance the inmate's eligibility for private insurance for Medicaid benefits and for care outside the prison.

Opponents' Testimony: None

Questions From Committee Members:

REP. SQUIRES asked if this is another shift of dollars. Mr. Russell stated that some people have their own insurance. In other instances it is.

Closing by Sponsor:

REP. KASTEN stated that this is not one of the recommendations from the Criminal Justice and Corrections Committee. It was discussed, but was never put in the form of a recommendation. The state's correctional policy is that a person convicted of crime shall be dealt with in accordance with individual characteristics, circumstances, needs and potentiality. Seriously ill persons should have available speedient mechanisms that would enable them to apply for parole while completing their minimum sentence. Most prisons do not have the staff to care for these inmates. This is a good bill which allows a person dignity at a time when he most needs that.

EXECUTIVE ACTION ON HB 429

Motion/Vote: REP. MESSMORE MOVED HB 429 DO PASS. Motion passed unanimously.

HEARING ON HB 468

Presentation and Opening Statement by Sponsor:

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL **DATE** 2-6-91

NAME	PRESENT	ABSENT	EXCUSED
REP. ANGELA RUSSELL, CHAIR	✓		
REP. TIM WHALEN, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. JAN BROWN	✓		
REP. BRENT CROMLEY	✓		
REP. TIM DOWELL	✓		
REP. PATRICK GALVIN	✓		
REP. STELLA JEAN HANSEN	✓		
REP. ROYAL JOHNSON	✓		
REP. BETTY LOU KASTEN	✓		
REP. THOMAS LEE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. JIM RICE	✓		
REP. SHEILA RICE	✓		
REP. WILBUR SPRING	✓		
REP. CAROLYN SQUIRES	✓		
REP. JESSICA STICKNEY	✓		
REP. BILL STRIZICH	✓		
REP. ROLPH TUNBY	✓		

CS05HUMSER.MAN

HOUSE STANDING COMMITTEE REPORT

February 7, 1991

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 429 (first reading copy -- white) do pass .

Signed: _____

Angela Russell, Chairman

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services & Aging COMMITTEE BILL NO. HB 429

DATE 2-6-91 SPONSOR(S) Rep. Kasten

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
~~DPI Director, Helena~~	~~DPI~~	~~✓~~	
Dan Russell	Inst/Corrections Div	✓	
Todd Schlapfer 162 Lakehills Big Fork	MANP	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HB 428 is not returned to its original state, he would rather they killed the bill than be back in the courts concerning classification recommendations. He assured the Committee DOI would use this authority with a great deal of discretion, and urged them to adopt the proposed amendments.

Dan Russell, Administrator, Corrections Division, DOI, told the Committee that in other states all offenders are committed to correctional authority. He explained that the other interim subcommittee on juvenile and adult detention sponsored similar recommendations in HB 319 and HB 320.

Opponents' Testimony:

There were no opponents of HB 428.

Questions from Members of the Committee:

Senator Towe asked Sheriff Schafer if he had any thoughts on the proposed amendment. Mike Schafer replied he had none.

Senator Halligan said Judge McLean in Missoula was probably instrumental in the proposed amendment. Representative Gould replied he talked to Judge McLean, but never discussed Representative Mercer's amendment with him. He said he was comfortable with the bill before it was amended, and that the problem is everyone believes Swan River is the best place for young offenders. Representative Gould advised the Committee that Swan River has a maximum occupancy of 52, but may have 152 people waiting to get in. He said he believes DOI can better manage this problem, and asked that Senator Beck carry the bill.

HEARING ON HOUSE BILL 429

Presentation and Opening Statement by Sponsor:

Representative Betty Lou Kasten, District 28, told the Committee she served on the Criminal Justice Corrections and Advisory Council, and said this bill is not a recommendation of that Council. She explained that she believes HB 429 is a good bill as it would allow parole of individuals with incapacitating disease, who will not cause a problem if released.

Representative Kasten cited 46-8-202, MCA, and said certain felons would not be released. She told the Committee there are checks and balances in Section 4, and that Section 2 is mostly clean-up language. Representative Kasten further stated that HB 333 would clean up other language in the bill.

Proponents' Testimony:

Dan Russell, Administrator, Corrections Division, DOI, said HB 429 was drafted at the request of the Department. He explained

that now the Department cannot place medically incapacitated or terminally ill prisoners outside the prison. Mr. Russell advised the Committee that this is at great cost to the Department. He said $68,000 was spent for a tuberculosis patient, $21,000 for a multiple sclerosis patient, $43,000 for a heart valve replacement, and $16,000 for a brachial ulcer patient. He further stated that $149,000 was spent in outside infirmary costs.

Mr. Russell told the Committee that in 1990 a heart transplant patient who became parole-eligible, was looking at $300,000 in organ replacement costs. He said there are two inmates with AIDS who are incurring tremendous medical costs, as their medication and dietary needs are extremely expensive. Mr. Russell provided copies of articles from the Corrections Digest with regard to compassionate release (Exhibit #4).

Senator Tom Beck, District 24, said the bill would relieve pressure on Montana State Prison, and asked the Committee to give the bill favorable consideration.

Opponents' Testimony:

There were no opponents of HB 429.

Questions From Committee Members:

Senator Crippen said he believes HB 429 is an economic decision on the part of DOI to save money. Dan Russell replied the bill would save money for both DOI and the General Fund.

Senator Crippen commented that he did not have knowledge of the financial status of parolees, and asked if the state would pay their medical costs. Dan Russell replied that such costs are reimbursed at 50 percent.

Senator Crippen asked if compassion ends when prisoners get better, and if they would be brought back to prison. Dan Russell replied that page 2, line 17 says they "may" be sent back.

Senator Crippen asked for a scenario as to how to decide when to require a prisoner to return to prison and when not to. Dan Russell replied that if the prisoner has a good plan after he or she gets better, and the parole officer agrees and it is okay with the community, the prisoner could remain in that community.

Senator Crippen asked if a prisoner can deny taking parole. Dan Russell replied he did not believe so, but if the prisoner tells the Board he or she does not want to be paroled, the Board would probably not give them parole. He said such a situation exists right now.

Senator Towe asked about prognosis for recovery and if this would affect parole (page 1, line 2). Dan Russell replied that would be taken into consideration.

Senator Doherty asked about the exception in 46-18-202(2), MCA, and if there is a need to have the exception pertaining to a danger to society. Dan Russell said he was trying to consider the conscience of the court from the very start, as it might mean "even as it relates to medical parole".

Closing by Sponsor:

Representative Kasten read 46-18-101(2), MCA, to the Committee. She said seriously ill people should have the availability of outside medical care as most prisons don't have the staff or facilities to care for inmates. She asked that Senator Beck carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 429

Motion:

Senator Pinsoneault made a motion that HB 429 BE CONCURRED IN.

Discussion:

Senator Doherty said he wondered about language in 46-18-202, concerning incapacity and presenting a threat to society.

Amendments, Discussion, and Votes:

Senator Doherty made a substitute motion to insert "." after "death" on page 1, line 13, and to strike the remaining language.

Valencia Lane stated she had no problem with leaving the language in or taking it out. She said it is just a policy decision, and that remaining language allows people to be eligible for medical parole.

The motion made by Senator Doherty carried unanimously.

Senator Pinsoneault made a motion that HB 429 BE CONCURRED IN AS AMENDED.

Senator Rye said he heard the bill could shift the burden of cost to local government. Senator Pinsoneault replied it would at least get other funds involved. Senator Crippen advised Senator Rye that he had a good argument. He said he did not believe the cost would shift to local government, but to the General Fund. Curt Chisolm, Director, DOI, replied that people in pre-release status are still under state supervision, and the General Fund must pick up costs not covered by Medicaid. He commented that Medicaid pays 65-70 percent of medical costs at approved provider rates.

Senator Towe asked if those on parole are eligible for Medicaid and if those in prison are not. Curt Chisolm replied

affirmatively. He said people being transferred between facilities are also not covered.

Recommendation and Vote:

Senator Pinsoneault's motion that HB 429 BE CONCURRED IN AS AMENDED carried unanimously.

HEARING ON HOUSE BILL 379

Presentation and Opening Statement by Sponsor:

Representative Vivian Brooke, District 56, said HB 379 provides for good time credit for parole, and that the bill came out of the Criminal Justice Corrections and Advisory Council. She told the Committee the bill sets up conditions for parolees to meet in order to receive credit, and can be revoked at any time. Representative Brooke stated this legislation will have a positive effect on parole officer caseloads.

Proponents' Testimony:

Representative Betty Lou Kasten, District 28, said she was testifying as a member of the Criminal Justice Corrections and Advisory Council. She advised the Committee that one-half of the inmates at Montana State Prison are eligible for parole, and said good time was abolished before because statute made the process too complicated.

Senator Tom Beck, District 24, told the Committee he is the Chairman of the Criminal Justice Corrections and Advisory Council which studied the population issues of Montana State Prison. He asked the Committee to give the bill serious consideration.

Dan Russell, Administrator, Corrections Division, DOI, proposed an amendment and read 53-30-205, MCA, to the Committee. He said it stands to reason that if good time is granted during incarceration, it should be granted during parole. Mr. Russell reported that there are 876 people under parole supervision now, and that the bill would shorten their time, thus reducing that number, to allow parole officers to devote time to bigger problems.

Mike Shafer, Yellowstone County Sheriff, told the Committee he also represented the Montana Peace Officers Association in support of HB 379.

Opponents' Testimony:

There were no opponents of HB 379.

ROLL CALL

SENATE JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 11 Mar 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 11, 1991

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration House Bill No. 429 (third reading copy -- blue), respectfully report that House Bill No. 429 be amended and as so amended be concurred in:

1. Page 1, lines 13 and 14.
Following: "death" on line 13
Strike: remainder of line 13 through "46-18-202(2)" on line 14

Signed: R. Pinsoneault
Richard Pinsoneault, Chairman

3-11-91
Amd. Coord.

3-11 3:50
Sec. of Senate